

1 John E. Fisher, II
2 13120 Raritan ST
3 Westminster, CO. 80234
4 (650)444-7800
5 Managing Member of
6 Standard Street, LLC

<input checked="checked" type="checkbox"/> FILED	<input type="checkbox"/> RECEIVED
<input type="checkbox"/> ENTERED	<input type="checkbox"/> SERVED ON
COUNSEL/PARTIES OF RECORD	
FEB 05 2019	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

9 WILMINGTON TRUST, N.A.,
10 SUCCESSOR TRUSTEE TO CITIBANK,
11 N.A., AS TRUSTEE, FOR THE
12 BENEFIT OF REGISTERED HOLDERS
13 OF SECURED ASSET MORTGAGE
14 INVESTMENTS II TRUST 2007-AR1,
15 MORTGAGE PASS-THROUGH
16 CERTIFICATES, SERIES 2007-AR1,

17 Plaintiff

18 vs.

19 STANDARD STREET, LLC, a Nevada
20 limited liability company;
21 GRANITE RIDGE COMMUNITY
22 ASSOCIATION, a Nevada non-
23 profit corporation,

24 Defendants

Case No. 3:17-cv-00067-MMD-CBC

MOTION TO VACATE DEFAULT JUDGEMENT
AND GRANT TIME TO ANSWER COMPLAINT

25 Defendant STANDARD STREET, LLC comes forth to pray for relief and
26 ask this court to vacate the DEFAULT JUDGEMENT and allow
27 DEFENDANT to answer the complaint and file a counter-complaint
28 against the PLAINTIFF, WILMINGTON TRUST, and CO-DEFENDANT,
GRANITE RIDGE HOMEOWNERS ASSOCIATION.

1
2 GENERAL ALLEGATIONS

3
4 On April 22, 2014, STANDARD STREET, LLC attended a trustee's sale
5 with the intent of bidding on 6401 Peavine Hills Ave in Reno.
6 STANDARD STREET, LLC was prepared to bid up to \$45,000. STANDARD
7 STREET, LLC ended up purchasing 6401 Peavine Hills Ave in Reno at
8 the trustee's sale for \$11,000.00 as a bona fide purchaser. The
9 bid was not the only bid received by the trustee. Alternate bids
10 evidence that STANDARD STREET, LLC's bid was a fair offer.
11

12
13 STANDARD STREET, LLC was aware of extensive fire and water damage
14 when their bid was made including, but not limited to, the
15 garage, kitchen, upstairs bedroom and bathroom plus smoke damage
16 throughout the house. This made the risk of purchase high and
17 supports the final purchase price on the property.
18

19
20 It is STANDARD STREET, LLC's belief that the fire damage occurred
21 almost two years prior to the sale, leading them to believe that
22 the property had been abandoned by both the prior homeowner and
23 the bank. A copy of the news story is attached.
24

25
26 It is STANDARD STREET LLC's belief that WILMINGTON TRUST had
27 knowledge of the fire damage and vacancy as the house was boarded
28 up and winterized when STANDARD STREET LLC acquired the property.

1 Information about fire damage or repairs were not provided nor
2 offered to the court. It is STANDARD STREET, LLC's belief that
3 this information was withheld to diminish the DEFENDANT's
4 financial interest in the property.

5
6 To date, STANDARD STREET, LLC has extensively repaired and
7 continues to repair 6401 Peavine Hills Ave to the amount of
8 approximately \$200,000. This includes, but is not limited to,
9 hiring a structural engineer, structural repairs on the house,
10 drywall, smoke damage, roofers, painters, and stucco. These
11 repairs were done in good faith as shortly after the purchase of
12 said property, the Nevada Supreme Court upheld the Homeowner's
13 Association's right to sell subject properties non-judicially for
14 delinquent HOA assessments as a true super-priority lien which
15 extinguished a first deed of trust on the property. (SFR
16 Investments Pool 1 v. U.S. Bank, 334 P.3d 408 (Nev. 2014))
17
18

19
20 On or about January 7, 2019, STANDARD STREET, LLC became aware of
21 a foreclosure sale was scheduled for real property owned by them.
22 Said sale was scheduled for January, 24, 2019 at 11:00 AM.
23 STANDARD STREET, LLC did not receive proper service notifying
24 them of the sale.
25

26
27 On January 9, 2019, STANDARD STREET, LLC promptly notified
28 Plaintiff, QUALITY LOAN SERVICES, the trustee for Plaintiff, and

1 SELECT PORTFOLIO SERVICING, the loan services for WILMINGTON
2 TRUST that no prior notice had been received and they were
3 contesting the sale. A copy of said letter is attached.
4

5 The Plaintiff alleges that STANDARD STREET, LLC was properly
6 served at 2300 Dickerson RD #50, Reno, NV. Mr. Fisher no longer
7 resided at that property nor had he for years.
8

9
10 It is the belief of STANDARD STREET LLC that WILMINGTON TRUST did
11 not exhibit proper due diligence for notifying STANDARD STREET
12 LLC by attempting service at the property address at time of the
13 initial filing on November 28, 2016 or at all until April 20,
14 2017, almost five months later.
15

16
17 It is the belief of STANDARD STREET, LLC that WILMINGTON TRUST
18 did not exhibit proper due diligence for notifying STANDARD
19 STREET, LLC by attempting service at the address on file with the
20 Washoe County Tax Assessor or the address listed as the place of
21 business with the Nevada Secretary of State.
22

23 In addition, WILMINGTON TRUST mentions in their Joint Discovery
24 Plan that they "attempted to identify current addresses for
25 individuals associated with Standard Street, such as...the
26 individuals listed on the relevant deeds as recipients for the
27 county recorder's mailing of final recorded documents...",
28

1 however the Trustee's Deed for the property recorded April 30,
2 2014 listed a recording address in Carson City where service was
3 not attempted by WILMINGTON TRUST at any point in time.

4
5 On or about April 18, 2017, an eviction was commenced and served
6 upon Mary Leisek, a resident of 6401 Peavine Hills Ave and former
7 significant other of Mr. Fisher. A copy of the NOTICE TO QUIT and
8 AFFIDAVIT OF SERVICE is attached.
9

10
11 The Plaintiff alleges STANDARD STREET, LLC was properly served at
12 6401 Peavine Hills Ave., Reno, NV. Mr. Fisher was not at his
13 residence on April 20, 2017. The Plaintiff's affidavit of
14 service states the document was served upon an unknown party
15 "Jane Doe" who refused to give their name. It is our belief that
16 Ms. Leisek was present and appears to have accepted service. It
17 is our belief, since Ms. Leisek was hostile to Mr. Fisher, she
18 concealed her acceptance of service from Mr. Fisher.
19

20
21 In addition, Mr. Fisher did not receive copies of any prior or
22 subsequent documents relating to the case, even though he was a
23 party named in the case, which would have also drawn his
24 attention to pending litigation.
25
26
27
28

1 Mr. Fisher had counsel throughout April of 2017 and, had he
2 received any sort of notification, it would have been forwarded
3 to such counsel for resolution.

4
5 Mr. Fisher currently has pending litigation in the First Judicial
6 District Court Of Nevada with Ms. Leisek.

7
8
9 STANDARD STREET, LLC and Mr. Fisher desire to defend the case on
10 the merits.

11
12 Under Federal Rule of Civil Procedure Rule 60(d) - Other Powers
13 to Grant Relief. This rule does not limit a court's power to: (1)
14 entertain an independent action to relieve a party from a
15 judgement, order, or proceeding; (2) grant relief under 28 U.S.C.
16 1655 to a defendant who was not personally notified of the
17 action; or (3) set aside a judgement for fraud on the court.

18
19
20 Tozer v. Charles A. Krause Mill, Co., 189 F.2d 242, 245 (3d Cir.
21 1951) ("Matters involving large sums should not be determined by
22 default judgments if it can reasonably be avoided. Any doubt
23 should be resolved in favor of the petition to set aside the
24 judgment so that cases may be decided on their merits.")

25
26
27 In 2014, the HOA was not required to notify the first deed of
28 trust holder unless the trust holder "opted-in" to the

1 notifications. They were also not required to state sub-priority
2 versus super-priority lien. The Plaintiff factually
3 misrepresented these facts.
4

5 WILMINGTON TRUST states that the HOA did not give proper service
6 and violated Nevada law, however they continually reference the
7 2015 NRS code, not the 2013 NRS code that was in effect at the
8 time of the trustee's sale. That omission is very misleading as
9 it changes material facts regarding this case. The 2015
10 amendments only apply to HOA foreclosure sales that occurred on
11 or after Oct 1, 2015. The amendment does not include any
12 retroactive application of the changes, thus past foreclosure
13 sales are not subject to those changes. The 2013 NRS code 116 did
14 not expressly require notice to be given to the lender and did
15 not require the HOA or its Trustee to state the super-priority
16 versus sub-priority lien amounts, as WILMINGTON TRUST claims it
17 should have in its reply.
18
19
20

21 In NATIONSTAR MORTGAGE LCC, Appellant, vs. SANTICOY BAY LLC
22 SERIES 2227 SHADOW CANYON, Respondent the court states "the rule
23 from prior Nevada cases that inadequacy of price alone "is not
24 enough to set aside a sale"".
25

26
27 In SATICOY BAY LLC SERIES 350 DURANGO 104 v. WELLS FARGO HOME
28 MORTGAGE, 388 P.3d 970 (Nev. 2017) the Nevada Supreme Court held

1 that an HOA's NRS 116 non-judicial foreclosure sale does not
2 implicate a state action for purposes of invoking due process
3 protections under the United States and Nevada constitutions.
4

5 STANDARD STREET, LLC would have been willing to participate
6 despite the allegation stated in Document 36, page 6, line 26.
7 STANDARD STREET, LLC believes this case was, as the Plaintiff
8 states, "a gotcha-style judgement".
9

10
11 STANDARD STREET, LLC believes there is a dispute in material
12 facts, some of which appear to be deliberately withheld from the
13 court. Document 36, page 6, lines 13-21.
14

15 WHEREAS,
16

17
18 STANDARD STREET, LLC maintains that they were not properly served
19 and they were not given their right to defend themselves or file
20 counter-complaints in court against the inaccurate allegations
21 claimed in WILMINGTON TRUST's filings with this court.
22

23 STANDARD STREET, LLC maintains that they were not properly served
24 and they were not given their right to file a counter-complaint
25 in court against the co-defendant, GRANITE RIDGE HOMEOWNERS
26 ASSOCIATION.
27
28

1 WILMINGTON TRUST will be unjustly enriched by the default
2 judgement against STANDARD STREET, LLC due to the extensive
3 repairs done since the property was purchased.
4

5 WILMINGTON TRUST had abandoned said property for ten (10) years,
6 over three and a half (3.5) years after STANDARD STREET, LLC
7 purchased the subject property. STANDARD STREET, LLC will be
8 adversely affected by said judgement.
9

10
11 Neither STANDARD STREET, LLC nor Mr. Fisher are currently
12 represented by counsel. Counsel is currently being sought.
13

14 Real estate is unique and damages caused by a wrongful
15 foreclosure are extremely hard to quantify.
16

17
18 STANDARD STREET, LLC has affirmative defenses for the allegations
19 spelled out in the COMPLAINT.
20

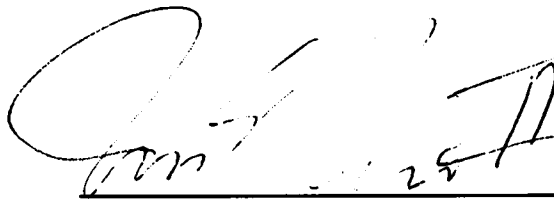
21 THEREFORE,
22

23 Standard Street, LLC respectfully requests the following:
24

25 Relief of DEFAULT JUDGEMENT,
26

27
28 Thirty days to respond to the COMPLAINT,

Injunctive relief as the court deems appropriate.



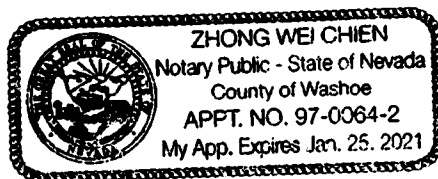
John E. Fisher, II, Managing Member of
STANDARD STREET, LLC

DATED: February 5, 2019

State of Nevada
County of Washoe

This instrument was acknowledged before
me on 2/5/2019 by JOHN E. FISHER, II


Notary Public



QUALITY LOAN SERVICES CORPORATION
2763 Camino Del Rio South, San Diego CA 92108

January 7, 2019

To Whom It May Concern:

On April 22, 2014 STANDARD STREET, LLC purchased a property in Reno, NV (6401 Peavine Hills Ave, Reno NV 89523) at a trustee's sale due to unpaid HOA dues. Said property had been set on fire by the previous owner and sustained severe structural damage. STANDARD STREET, LLC recorded the deed with the Washoe County recorder. On September 18, 2014 the Supreme Court of Nevada ruled in SFR Investments Pool 1, LLC v. U.S. Bank holding (1) Nev. Rev. Stat. 116.3116(2) gives an HOA a true superpriority, proper foreclosure of which will extinguish a first deed of trust; and (2) chapter 116 permits nonjudicial foreclosure of HOA liens. Due to this case, in good faith, STANDARD STREET, LLC financed repairs and improvements on the house in excess of \$100,000. Mr. Fisher of STANDARD STREET, LLC has lived in and cared for this property since the date of purchase.

Recently, Mr. Fisher of STANDARD STREET, LLC was told by a friend that said property was being sold at a trustee's sale dated January 24, 2019. In doing further research several documents were discovered:

- I. A Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust filed January 5, 2009 which mentions a default date of October 1, 2008. This notice was rescinded August 1, 2014 (filed August 4, 2014) stating that the original Notice should be treated as if it never existed - "...as if said Declaration of Default and Notice of Breach had not been made and given." With this wording, the statute of limitations was set back to starting off the October 1, 2008 default date. According to Nevada Law, the statute of limitations for foreclosure on a property is six years, for which the statute of limitations would have expired October 1, 2014.
- II. A Notice of Breach and Default and of Election to Cause Sale of Real Property which states a filing date of May 5, 2018 and a delinquency date of December 1, 2008 against the previous owner. First, said notice was never properly posted. Second, this is a different date than the first Notice of Breach (which listed October 1, 2008). Regardless, even based off this new December 1, 2008 default date, the statute of limitations would have run out six years later on December 1, 2014 and yet this document was not filed until May 9, 2018 which is almost ten years after the default. As such, the document is not perfected.

We also call to attention laches. The sale was recorded in 2014 with the county. At no point in time was STANDARD STREET, LLC notified that their claim to the property was not correct. (To the contrary, QUALITY LOAN SERVICES CORPORATION cancelled the original Notice of Default mentioned above, several months after the sale.) In good faith, throughout the last six years Mr. Fisher of STANDARD STREET, LLC has repaired and improved on the property including paying utilities, maintenance and taxes. If the sale goes through, STANDARD STREET, LLC's damages will be substantial.

Finally, as public records show the property was sold at a trustee's sale and STANDARD STREET, LCC is a bona fide purchaser in good faith, the attempt to foreclose on the property is in bad faith.

With this in mind, we respectfully demand that within 5 days you withdraw the property from the trustee's sale and contact us via telephone (650-444-7800) or email (jfisher2@sbcglobal.net) due to the urgent nature of this matter.

We have tried many times to reach out to QUALITY LOAN SERVICES CORPORATION and SELECT PORTFOLIO SERVICE, INC., to remove the Deed of Trust from title, with no response. We welcome dialog with them.

Respectfully,

Mr. John E Fisher II
Standard Street, LLC

CC: Noncommercial Registered Agent, Kristin A. Schuler-Hintz, 9510 W. Sahara Ave #200, Las Vegas NV 89117

CC: President, Rochelle Matkin, 2763 Camino Del Rio South, San Diego CA 92108

CC: Quality Loan Servicing Corporation, 411 Ivy Street, San Diego CA 92101

CC: WILMINGTON TRUST, NA, SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE, FOR THE BENEFIT OF REGISTERED HOLDERS OF STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST 2007-AR1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-AR1, c/o SELECT PORTFOLIO SERVICING, INC., 3815 South West Temple, Salt Lake City, UT 84165-0250

FIVE DAY TENANCY AT WILL

NOTICE TO TERMINATE TENANCY

Date 18 April, 20 17

TO: Mary E Leizek
6401 Peavine Hills AV
Reno NV 89701

You are hereby notified to remove from the premises now held and occupied by you, being the premises known as 6401 Peavine Hills AV, Reno, Nevada within the period of five days days from and after the date thereof.

This notice is given under NRS 40.251 for the purpose of termination your tenancy of said premises on the ~~17th~~ 25th day of April, 20 17.

Dated this 18th day of April, 20 17.

[Signature]
Landlord

AFFIDAVIT OF SERVICE

1 JUDY KATZ residing at HODGEN RD Colorado Springs CO
 (name of person making service) (address of person making service)

am and was at the time the herein mentioned service took place a citizen of the United States. I am over the age of eighteen years.

As stated, I served to the below tenant

_____ a 5-Day Pay or Vacate Notice for Non-Payment of Rent,

_____ a 5-Day Breach of Contract Notice,

_____ a 30/7 Day No Cause Notice to Vacate,

_____ an Unlawful Detainer Notice

X Other 5 day tenancy at will

To Mary E. Leisek and/or any other tenants, residing at
6401 Peachtree Hills Ave Reno NV

1 ✓ By personally serving a copy of said notice to Mary E. Leisek
 On 18 April 2017 (name of person served)
 (Date of Services)

OR

2 _____ By posting a copy of said notice on the main entrance of the premises on

 (Date of Services)

AND

✓ By mailing a copy of said notice to the tenant at the rental address on
19 April 2017 (See certificate of mailing attached)
 (Date of Mailing)

Personal service or posting of the eviction notice on the door was witnessed by

_____ this _____ day of _____, 20____
 (Signature of Witness)

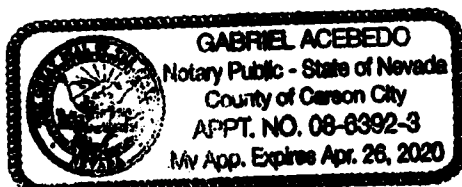
I declare under penalty of perjury that the foregoing is true and correct

4/18/17 _____
 Date Signature of person making service

State of Nevada
County of Carson City
 Subscribed and sworn to before me this 18th day of April, 2017

 Deputy Clerk or Notary Public

If personal service made, signature of tenant or co-resident acknowledging receipt of notice



 Tenant or co-resident

2:45



kolotv.com



Share



NW Reno House Fire Out



By Staff | Posted: Mon 5:45 PM, May 07, 2012 |

Updated: Tue 8:18 AM, May 08, 2012





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☐ Adult Signature Restricted Delivery \$0.00
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0238 21
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Sent To
W. Morgan Trust cb
Street and Apt. No., or PO Box No. 3rd St
City, State, ZIP+4® Salt Lake City UT 84103

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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City, State, ZIP+4® San Diego CA 92101

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☐ Adult Signature Restricted Delivery \$0.00
Postage \$0.50
Total Postage and Fees \$6.70

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Sent To
Rachelle Matkin
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City, State, ZIP+4® San Diego CA 92108

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